

Letter re: Status Update re Due Diligence Loans

February 12, 2013

**VIA ELECTRONIC MAIL**

The Honorable Denise L. Cote  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street, Room 1610  
New York, NY 10007-1312

Re: FHFA Actions, No. 11 Civ. 5201 (S.D.N.Y.) (DLC) et al.

Dear Judge Cote:

We write on behalf of Plaintiff Federal Housing Finance Agency (“FHFA”) to provide a status update on negotiations regarding Defendants’ provision of information to enable third parties to produce loan files and other documents relating to the loans on which Defendants performed due diligence or commissioned others to perform due diligence while arranging the Securitizations.

As FHFA noted at the hearing last Thursday, February 7, it was during a group call on the day before the hearing that some Defendants offered for the first time to compile and provide the information requested in the spreadsheet that constitutes Exhibit A to FHFA’s letter to the Court dated February 1, rather than maintaining, as most Defendants had for the preceding several weeks, that FHFA should cull the information from Defendants’ productions. Following last week’s conference, the parties in all cases met and conferred on a bilateral basis. These sessions have been largely productive. Most Defendants confirmed that they will provide the information requested by FHFA, and most have also agreed to endeavor to furnish the requested information within the next few weeks. The number of loans for which Defendants are providing the requested information ranges from the hundreds to as high as several hundred thousand.

The exception is the Goldman Sachs Defendants, with whom an impasse has been reached. Those Defendants made an application to the Court this morning, maintaining the position that FHFA and not Defendants should compile the information, based mainly on a claim of undue burden. FHFA will respond to that application separately tomorrow.<sup>1</sup>

For background on the “kind of diligence” performed by Defendants or at their behest, (2/7/13 Tr. at 85), and to inform the Court more precisely of the status of negotiations, FHFA can state the following. In the lists of diligenced loans that the Defendants provided last October and November, following the Court’s rulings on October 15, Defendants in the aggregate listed loans

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<sup>1</sup> A dispute also exists with the Deutsche Bank Defendants, because those Defendants have yet to produce even the list of loans that underwent diligence in connection with two Securitizations in the *FHFA v. SG Americas, Inc.* action (11-CV-6203), as to which Deutsche Bank acted as underwriter and seller. Deutsche Bank has also refused to provide a date by which it will produce the information. FHFA respectfully requests that the Court order Deutsche Bank to: (i) provide the list of loans no later than February 19, 2013, or (ii) state that it does not intend to rely on diligence performed on specific loans as any part of its due diligence defense.

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on which at least three different forms of diligence were performed: (i) loan-file review performed by third parties on a sample of loans drawn from the pool underlying the Securitizations; (ii) diligence performed on loans at the time Defendants acquired the loans, some of which was based on loan-file review; and (iii) diligence performed on loan characteristics, such as review of the valuation of the mortgaged properties.

One issue that remains the subject of ongoing discussions with FHFA and certain Defendants is whether FHFA will require that Defendants complete the spreadsheet that is Exhibit A for all loans diligenced during the process of loan acquisition, including any loans that were not ultimately included in the Securitizations. FHFA is meeting and conferring with Defendants to determine if there is a way to narrow the universe of loans about which FHFA will seek information. The parties also continue to meet and confer about the methods used to carry out valuation diligence (or diligence on other loan characteristics), also with the purpose of determining if the parties can reach agreement about the extent of the information provided about those loans.

In sum, the parties have made significant progress, and FHFA need not pursue at this time the relief it sought by letter to the Court dated February 1, 2013. The sole exception is with respect to the Goldman Sachs Defendants, and FHFA intends to address those Defendants' cross-application separately. FHFA also additionally requests that the Deutsche Bank Defendants be ordered to: (i) provide the list of diligenced loans no later than February 19, 2013, for the two Securitizations in the *FHFA v. SG Americas, Inc.* action or (ii) state that they do not intend to rely on diligence performed on specific loans as any part of its due diligence defense.

Respectfully submitted,

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